

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES WERDLOW,

Plaintiff,

CIVIL ACTION NO. 09-CV-11009

VS.

DISTRICT JUDGE VICTORIA A. ROBERTS

**PATRICIA CARUSO, DEBORAH
BEEKER, and ELIZABETH
LEVINE,**

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

**ORDER DENYING PLAINTIFF’S MOTION TO COMPEL DISCOVERY (DOCKET
NO. 10)**

This matter comes before the Court on Plaintiff’s Motion to Compel Discovery filed on June 26, 2009. (Docket no. 10). No response has been filed and the time for response has now expired. The matter has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 20). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). The matter is now ready for ruling.

Plaintiff, a state prisoner proceeding *pro se*, moves for an order to compel production of documents from non-party custodians of records. Specifically, Plaintiff asks the Court to compel Covenant Hospital to produce Plaintiff’s medical records and “other information” for the dates May 1, 2006 to present. Plaintiff also seeks an order to compel Saginaw Regional Facility (“SRF”) Health Care Department to produce Plaintiff’s medical records, excerpts from 500 unit and SRF control center log books with all information pertaining to Plaintiff from October 11, 2006 through October 20, 2006, and “other information” from SRF Health Care Department pertaining to Plaintiff

from the dates May 1, 2006 to present. (Docket no. 10). Plaintiff seeks discovery from the non-party custodians rather than Defendants in order to discourage tampering of the materials by the Defendants. (Docket no. 10).

The Court finds that Plaintiff's motion to compel is premature. This Court entered a Report and Recommendation recommending that Defendant Caruso be dismissed from this lawsuit. (Docket no. 15). With regard to Defendants Beeker and Levine, the summonses were returned unexecuted and proper service has not been completed. (Docket nos. 7, 8). Additionally, the Plaintiff does not state that he attempted to obtain the records without Court intervention, particularly with regard to his own medical records. The Court will therefore deny Plaintiff's motion to compel discovery because it was filed prematurely. Discovery should be served and responded to without court involvement unless a problem develops which requires court intervention. If this lawsuit proceeds, Plaintiff must attempt to obtain his medical records and responses to his discovery requests without court intervention and, if that is unsuccessful, may file a motion to compel after the time for responding has expired.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Discovery (docket no. 10) is **DENIED** without prejudice.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: November 16, 2009

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon James Werdlow on this date.

Dated: November 16, 2009

s/ Lisa C. Bartlett
Case Manager